1947. **File No.** O Prevention of Corruption/47

Legal **DEPARTMENT**

A **BRANCH**

Subject:— Opinions under the Prevention of Corruption of Act, 1947

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Std. Sectt. Slip 24 B e.

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It appears that it came to the notice of Government that in some cases the Inspector General of Police had refused to accord sanction under clause (c) of section 6 of the Prevention of Corruption Act, 1947 and consequently by its letter No.2172/5 G, dated 11.6.1947 (at p.31 ante) Government directed that the Inspector General of Police should in future submit to Government for orders cases in which he did not think it necessary to accord sanction to prosecution. The Inspector General of Police appears to have taken objection to these orders of Government. In his letter at p.39 ante he states:

"I would invite attention to section 6(c) of India Act II of 1947 (Prevention of Corruption Act 1947) and submit that so far as cases falling under sections 161 and 165 I.P.C. and section 5 of the said Act are concerned the authority competent to remove from office is by law required to act in the matter of sanction to prosecute in his discretion and that it would not therefore be lawful in such cases for the said authority to surrender his discretion as contemplated by Government. I presume however that as orders regarding sanction to prosecute are executive orders, it would be competent for Government to reverse or modify any such order made under section 6 of the said Act."

Secretary H.D. proposes to inform the Inspector General of Police as follows:-

"The instructions issued by Government are in no way inconsistent with section 6(c). It is not understood how the Inspector General considers that he has been given any special discretion in the matter. The power to remove vests in the

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Provincial Government also. His attention may be drawn to section 5(1) of the District Police Act under which he exercises his authority subject to the rules and orders as may be made by Government. It is necessary for Government to ensure that powers given by it to its officers are appropriately used."

The H.L.A. is requested to examine whether the legal position as stated xx by Secretary, H.D. is correct.

Under clause (c) of section 6 of the Prevention of Corruption Act, 1947 power to sanction prosecution in the case of any other person vests in the authority competent to remove him from his office. By H.D. Order No. 751/3-II(b), dated 15/7/1939 issued under section 241(1) (b) of the Government of India Act, 1935 Government has empowered the Inspector General of Police to make appointments to certain posts in the subordinate ranks of the Police force in the Province of Bombay excluding the Bombay City, namely, the posts of (1) Inspectors of Police (2) Police Prosecutors, (3) Sub-Inspectors of ~~Police~~ Police and (4) Sergeants. This power of appointment includes power of removal or dismissal. Consequently the Inspector General of Police is competent to remove Sub-Inspectors from their office. But by empowering the Inspector ~~General~~ General of Police to appoint Sub-Inspectors Government did not divest itself of power of dismissing its servants (see section 240(1) of the Government of India Act, 1935; section 29(1) of the Bombay District Police Act,1890; Suraji Narain Anand v.North West Frontier Province 1941 F.I.J. Vol.IV 22 at p.29). It therefore follows that both the Provincial Government and the Inspector General of Police will be authorities competent to accord sanction under clause (c) of section 6 of the Prevention of Corruption Act,1947 and consequently in cases where the Inspector General of Police has refused to accord such sanction it would be competent for Government to exercise its power to accord sanction and by the accord of such sanction Government would not be interfering with the discretionary powers of the Inspector General of Police nor

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would it revise his order, for both the authorities exercise their powers independently. Consequently the objection taken by the Inspector General to the Government orders dated 11.6.1947 on the ground that they would involve surrender of his powers is not valid.

The view taken by Secretary, H.D. that Government orders dated 11.6.1947 would be relatable to section 5(1) of the Bombay District Police Act, 1890 does not appear to be correct. Section 5(1) provides:-

"For the direction and supervision of the Police-force of every district of the Presidency to which this Act extends the Provincial Government shall appoint an Inspector General of Police who shall have such functions authority and responsibility as are hereinafter provided, subject to the provisions of this Act, and to such rules and orders as may be made by the Provincial Government in this behalf."

The power vested in the authority under section 6(a) of the Prevention of Corruption Act is not a function authority or responsibility provided in the Bombay District Police Act. Consequently section 5(1) cannot provide legal cover to the present orders of Government. But these orders are in the nature of executive orders which it is competent for Government to issue to its officers.

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Remembrancer of Legal Affairs.

U.R. to H.D. No.7658 dated the 24th July 1947.

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On a complaint from one Mr. Arolkar that Mr. Pagare, Chief Inspector of Textiles was demanding a bribe for granting his father's application for a license for sale of cloth, the Police sent him on 17-3-1947 with Rs.300 in marked currency notes to Mr.Pagare who accepted the money and was soon after arrested. Mr.Pagare's accomplice one Mr. Dalal also was arrested on 19-3-47 in connection with the same offence. Both of them were chargesheeted on 19-4-1947 for the offences under sections 161 and 109 I.P.C. As the charge sheet was filed without obtaining the requisite sanction under section 6 of the Prevention of Corruption Act, 1947 the case withdrawn on 3-6-1947 with the permission of the Court. With a view to institute the case again the Deputy Commissioner of Police has now moved Government to accord sanction under section 6 of the Prevention of Corruption Act, 1947. The A Addl. D.C.S. (Enforcement) who was consulted in the matter observes at pp.17 and 19 ante:

> "It seems the Police investigation is without jurisdiction and unauthorised, because provisions of section 3 of the Prevention of Corruption Act (II of 1947) have not been complied with. That section makes an offence under section 161 I.P.C. a cognisable one notwithstanding anything to the contrary contained in the Code of Criminal Procedure. There is also a proviso to section 3 ... . The language of the proviso is very clear and under it no officer below the rank of a Deputy Superintendent of Police can investigate an offence as falling under section 161 I.P.C. without an order of the Magistrate of the First Class nor can he effect an arrest without warrant. Papers of Police enquiry show that the investigation has been all carried all throughout by Sub-Inspector Mr. Miranda ..... . The result is that the whole of the investigation is without an authority and consequently bad in law. No sanction can, therefore, issue in this case upon the investigation which has been completed."

The questions raised for the consideration of the R.L.A. are:-

(1) Whether the accused can be prosecuted on the investigation of the complaint already carried out by Mr. Miranda .

(2) Whether the sanction of this Government or of the Central Government would be necessary under section 6 of the Prevention of Corruption Act, 1947, for prosecuting Mr. Pagare.

2. Question No.(1) - Section 3 of the Prevention of Corruption Act, 1947, provides:-

> " An offence punishable under section 161 or section 165 of the Indian Penal Code (XLV of 1860) shall be deemed

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to be a cognisable offence for the purposes of the code of Criminal Procedure, 1898 (Vof 1898), notwithstanding anything to the contrary contained therein:

Provided that a police officer below the rank of Deputy Superintendent of the Police shall not investigate any such offence without the order of a Magistrate of the first class or make any arrest therefore within out a warrant."

It is clear from this provision that an investigation of an offence under section 161 and section 165 I.P.C. cannot be carried on by a Police Officer below the rank of the Deputy Superintendent of Police without the order of a Magistrate of the first class. But the main question for consideration is whether the proviso to section 3 applies to the City of Bombay. The term "Presidency Magistrate" would not ordinarily be included in the words "District Magistrate" or "Magistrate of the first class" because sections 10 and 12 of the Criminal Procedure Code show that the District Magistrate and Magistrates of the first class are appointed only in Districts outside the Presidency-towns. See Chotasingh 32 Madras 303. It follows, therefore, that in the City of Bombay there is no Magistrate of the first class nor is there any Deputy Superintendent of Police. Consequently, the proviso to section 3 of the Prevention of Corruption Act will have no application to the City of Bombay. "A proviso is generally used to indicate that the general provision to which it is added is not applicable to instances pointed out in the proviso which are in effect cut out of the general provision by that proviso." See Narasimham's Interpretation of Indian Statutes and the Government of India Act, 1935, p.80. Investigations of offences under sections 161 and 165 I.P.C. carried on in Bombay would not, therefore, fall within the proviso to section3. That being the legal position, the main provision contained in section 3 will only apply to all investigations of offences under sections 161 and 165 of the Indian Penal Code, and consequently ~~xxxx

sections 161 and 165 of the Indian Penal Code committed in the City of Bombay, the next question for xxx consideration is whether the investigation carried on by Mr. Miranda would make the prosecution of Messrs. Pagare and Dalal illegal. Section 156(2) of the Criminal Procedure Code provides that no proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate. It is clear from this provision that a conviction or acquittal does not depend upon the question of what particular officer actually conducts the investigation which results in the trial. That is determined mainly upon the evidence that is given at the trial. See Chitaley's Code of Criminal Procedure, Vol.I.p.765. Section 156(2) does not apply to a police officer in the City of Bombay. But section 59(2) of the Bombay City Police Act, 1902, does contain a similar provision. It would, therefore, follow that the investigation carried on by Mr. Miranda though unauthorised would not vitiate the trial of Messrs. Pagare and Dalal. Under section 190 of the Criminal Procedure Code the Magistrate can take cognisance of offences (a) upon receiving a complaint of facts which constitute such offence (b) upon a report in writing of such facts made by any police officer and (c) upon information received from any person other than a police officer or upon his own knowledge or suspicion that such offence has been committed. In the Public Prosecutor v.Ratna Velu Chetty, 49,Mad.526, it was held that by virtue of sections 190(1) (b) and 200 A (a) of the Criminal Procedure Code Magistrates mentioned in section 190 are entitled to take xxxx cognisance of even non-cognizable offences upon a report made in writing by a police officer without examining the officer on oath A fortiorari cognisance of a cognizable offence upon a report made in writing by a police officer though unauthorised to investigate can be taken by a Magistrate under section 190. Consequently, it appears that there would be no legal objection to filing a charge sheet against Messrs. Pawate ar Dalal for an offence under sections 161 and 109 of the Indian Penal Code But to be on the safe side, these accused should not be arrested by the police. The Magistrate may be requested on filing the charge sheet to issue process against the accused.

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4. Question No.(2) - Clause (b) of section 6 of the Prevention of Corruption Act, 1947, provides:

> "No Court shall take cognisance of an offence punishable under section 161 or section 165 of the Indian Penal Code or under sub-section (2) of section 5 of this Act, alleged to have been committed by a public servant except with the previous sanction, in the case ~~xx~~ of person who is employed in connection with the affairs of a Province and is not removable from his office save by or with the sanction of the Provincial Government or some higher authority, Provincial Government."

For the purpose of deciding whether the sanction of the Provincial Government or the Central Government is necessary, what is necessary to consider is under which Government the accused was employed at the time of the commission of offences under sections 161 and 165 of the Indian Penal Code. Mr. Pagare, though a permanent employee of the Central Government, is now under the control of the Provincial Government and was at the time of the offence in the employment of this Government. Consequently, sanction of this Government would be necessary to prosecute him for the offence under section 161 I.P.C. provided he is not removable from his office save by or with the sanction of the Provincial Government or some higher authority. Under section 197 of the Criminal Procedure Code, the sanction of the Governor exercising his individual judgment would be necessary provided Mr. Pagare is not removable from his office save by or with the sanction of the Provincial Govefnment or some higher authority and the offence of receiving illegal gratification was committed while acting or purporting to act in the discharge of his official duties. Rather than allow the prosecution to fail on a technical ground, it appears desirable that sanction both under section 6(b) of the Prevention of Corruption Act, 1947,

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and section 197(1) of the Criminal Procedure Code should be granted.

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Remembrancer of Legal Affairs.

U.R. to C.S.D. No.258Confl. dated the 1st July 1947.

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R.I. No.1943 dt.19.11.1947

Submitted.

2. This relates to the question of grant of sanction for prosecution under section 6(c) of the Prevention of Corruption Act, 1947, for acceptance of illegal gratification by the Sub-Registrar of Sangamner. It appears from the letter of the Inspector General of Registration, at p.1 ante, that the case was sent up to him for sanction by the D.S.P. Ahmednagar. The District Govt. Pleader, Ahmednagar, who was consulted in the matter is of the view that the case is a weak one. The I.G.R. however states that the Sub-Registrar has admitted that the extra money was found in the day's collection. He further suggests that such cases should first be seen by the D.M. and should be sent up to the authority concerned for grant of sanction for prosecution only if he considers that there is a case for trial. In the absence of any such instructions it is difficult for the authorities empowered to sanction prosecution to decide one way or the other unless the case is clearly strong enough. He has therefore requested Govt. to issue instructions for sanctioning authorities in such matters. D.S.R.D. in his note, at p.3 ante, observes:-

"In this particular case both the D.M. and the District Govt. Pleader opine that the case cannot be successfully launched under sec. 6(c) of the Prevention of Corruption Act. The authority to give or withhold sanction to prosecute in this case is the I.G.R. It is for the I.G.R. to decide whether to accept the view of the D.M. and the D.G.P. Govt. need not influence his judgment in this respect.

Regarding the question of procedure raised by the I.G.R. I think, the proper course will be for the police to approach the I.G.R. for sanction in such cases directly. The I.G.R. may consult the D.G.P. of the District concerned,

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if necessary, (in all cases he need not refer to the D.G.P. if he has no doubt) and decide whether to give or withhold the sanction under section 6(e) of the Act. I do not think the D.M. comes into the picture at all."

3 - For the reasons stated in his opinion dated 29th July 1947, the D.G.P. Ahmednagar states that the case is a weak one because after search only Re.1/- note in excess was found in the collection and the balance of Ans.10 cannot be explained and that even the explanation of the Sub-Registrar that the Rupee note might have been planted in the fold of Rs.2/- note may go against the prosecution. The D.M. has no where stated that the case cannot be sucessfully launched. In fact he does not appear to have seen these papers at all. It is on only the District Registrar who takes the same view as the D.G.P. In view of the provisions of sec. 4 of the Prevention of Corruption Act, 1947, it appears, that the court will presume, unless the contrary is proved, that the Sub-Registrar accepted the gratification. There would therefore be no objection to prosecuting him after the grant of the sanction by the Inspector General of Registration under section 6(e) of the said Act.

As regards the question of procedure raised by the I.G.R. the proper course would be for the police to approach the I.G.R. for sanction in such cases directly and after consulting the District Government Pleader of the place, may decide whether to give or withhold sanction under section 6(e) of the Prevention of Corrunption Act, 1947. It is not necessary for the Police in such cases to refer the papers to the D. M. The view taken by the D.S. R.D. on this point appears to be correct.

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The Facts are stated in the letter from the Inspector General of Registration, B.P.,No.P/Khsambekar dated 22.10.47 In para 2 of the said letter the Inspector General states:-
"A case has recently been sent up to me by the D.S -

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Seen and returned.

The course proposed by D.S. R.D. on both points is correct on the assumption that the Inspector General of Registration is the authority competent to remove the Sub-Registrar from office.

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Remembrancer of Legal Affairs.

U.R. to R.D. No.11476, dated the 1.12.1947.

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